

05-19-00280-CR

EX PARTE CHRISTOPHER RION,
Appellant

THE STATE OF TEXAS,
Appellee

FILED IN
5th COURT OF APPEALS
In the Court of Appeals
DALLAS, TEXAS
for the Fifth District of Texas
10/13/2019 12:38:53 PM
at Dallas LISA MATZ
Clerk

**STATE'S MOTION FOR EXTENSION OF TIME
TO FILE MOTION FOR REHEARING**

The State of Texas respectfully requests that this Court grant the State an extension of time to file a motion for rehearing so the State's contemporaneously submitted motion for rehearing can be filed. *See* Tex. R. App. P. 49.1, 49.8. Twenty-six days after this Court rendered its judgment—after the normal deadline to file a motion for rehearing—the court of criminal appeals decided *Ex parte Adams*, No. PD-0711-18, 2019 WL 5057265 (Tex. Crim. App. Oct. 9, 2019), which had similar issues to the ones here, but a different holding. Granting this motion would allow this Court to consider *Adams's* impact on this case.

In support of this motion, the State shows the following:

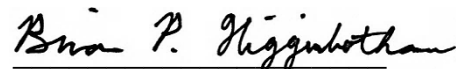
1. This case is on appeal from the Criminal District Court No. 5 of Dallas County, Texas in cause no. WX18-90101-L.
2. Appellant filed a pretrial application for writ of habeas corpus alleging that the doctrine of collateral estoppel bars the State from prosecuting him for aggravated robbery, and the trial court denied habeas relief.

3. On September 13, 2019, this Court rendered its judgment and held that the trial court abused its discretion in denying the application. *Ex parte Rion*, No. 05-19-00280-CR, 2019 WL 4386371, at *1 (Tex. App.—Dallas Sept. 13, 2019, no pet. h.) (mem. op., not designated for publication).
4. Twenty-six days later, however, the court of criminal appeals decided *Ex parte Adams*, No. PD-0711-18, 2019 WL 5057265 (Tex. Crim. App. Oct. 9, 2019).
5. *Adams* concerned two charges of aggravated assault that arose out of the same incident and the collateral-estoppel claim that followed after the defendant was acquitted of one of the charges. *Id.* at *1.
6. On review, the court of criminal appeals unanimously held that collateral estoppel did not apply and that the second prosecution could proceed. *Id.*
7. For reasons explained more thoroughly in the State’s motion for rehearing, *Adams* clarified key principles that guide a collateral-estoppel analysis, and under *Adams*, the trial court in this case did not abuse its discretion in denying habeas relief.
8. The normal deadline to file a motion for rehearing is 15 days after this Court rendered its judgment. Tex. R. App. P. 49.1.
9. Here, however, the State could not have raised *Adams* in a motion for rehearing within 15 days because *Adams* was not decided until 26 days after this Court rendered its judgment.

10. Because this late-breaking, controlling authority was decided after the 15-day deadline, this Court should grant the State an extension of time to file its motion for rehearing so the State's contemporaneously submitted motion for rehearing can be filed. *See* Tex. R. App. P. 49.8.
11. This Court can then benefit from *Adams's* guidance and apply its holding to the facts of this case.

The State therefore prays that this Court grant the State an extension of time to file a motion for rehearing so the State's contemporaneously submitted motion for rehearing can be filed.

Respectfully submitted,

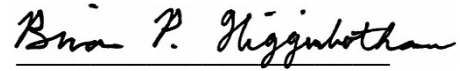


JOHN CREUZOT
Criminal District Attorney
Dallas County, Texas

BRIAN P. HIGGINBOTHAM
Assistant Criminal District Attorney
State Bar No. 24078665
Frank Crowley Courts Building
133 N. Riverfront Boulevard, LB-19
Dallas, Texas 75207-4399
(214) 653-3625 | (214) 653-3643 fax
brian.higginbotham@dallascounty.org

CERTIFICATE OF SERVICE

I certify that a true copy of this document was served on Michael Mowla as counsel for appellant on October 13, 2019. Service was made via electronic service to michael@mowlalaw.com.



Brian P. Higginbotham